

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Appl. No : 10/646,930 Confirmation No.: 1597
Inventor: : Legario et al
Filed: : August 25, 2003
Title: : Storage Stable ANFO Explosive Compositions Containing Chemical Coupling Agents and Method for Producing Same
TC./A.U. : 1793
Examiner : Aileen B. Felton

Docket No. : 6826-195/PMdC Customer No. : 001059

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Honorable Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

REPLY BRIEF

Dear Sir:

The present letter is filed in view of the Examiner's Answer to Appeal dated July 18, 2011. Applicant has appealed to the Board of Patent Appeals and Interferences from the final decision of the Examiner dated July 20, 2010, finally rejecting claims 31-33, 35, 36, 38-44, 48, 49, 51 and 53-56. Applicant respectfully submits herewith their reply brief to the Examiner's Answer.

This reply brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.41):

- I. Status of Claims
- II. Grounds of Rejection to be Reviewed on Appeal
- III. Arguments

I. **Status of Claims**

1. **Total Number of Claims in Application**

A total of 56 claims have been presented during prosecution of this case.

2. **Status of All of the Claims**

- A. Claims Cancelled: 1-30, 37, 45, 47, 50 and 52.
- B. Claims Withdrawn: 34 and 46
- C. Claims Pending: 31-33, 35, 36, 38-44, 48, 49, 51 and 53-56.
- D. Claims Allowed: None
- E. Claims Objected to: None
- F. Claims Rejected: 31-33, 35, 36, 38-44, 48, 49, 51 and 53-56.

3. **Claims on Appeal**

The claims on appeal are Claims 31-33, 35, 36, 38-44, 48, 49, 51 and 53-56.

II. Grounds of Rejection to be Reviewed on Appeal

The rejections to be reviewed on this appeal are as follows:

(i) Rejection under 35 U.S.C. 103(a) given Kelley in view of Baker

Claims 31-33, 35, 36, 38, 43, 44, 48, 49, 51, 53 and 56 were rejected as being obvious under 35 USC 103(a) given US 5,527,496 of Kelly in view of US 4,595,430 of Baker.

(ii) Rejection under 35 USC 103(a) given Kelly in view of Baker and further in view of Richard et al.

Claims 39-42, 54 and 55 were rejected as obvious under 35 U.S.C. 103(a) given Kelley in view of Baker and further in view of Richard et al. (US 6,113,714).

III. Argument

The Applicant respectfully submits that the Examiner has not responded to all of the Applicant's arguments set out in the Appeal Brief.

No Findings on Level of Skill and Knowledge of Persons Skilled in the Art

The Applicant respectfully submits that the Examiner has not responded to the Applicant's argument that a person skilled in the art knows the difference between ANFO explosives and dynamite, and that each explosive has respective strengths and weaknesses for certain applications. With reference to the disclosure of Baker, the Applicant provided objective evidence as to the significant differences between the two explosive in Section VII(4) of the Appeal Brief.

The Examiner has simply replied that Baker teaches an “‘ANFO type’ explosive in the sense that it does contain both ammonium nitrate and fuel oil” (see page 6, second paragraph, Examiner’s Answer). The Examiner has not provided any evidence or argument as to why a person skilled in the art would turn to Baker with respect to ANFO explosives.

Failure to Read Baker in Context

The Examiner has not responded to the fact that Baker is specifically directed to the desensitization of dynamite. The Examiner has further not responded to the inherent inconsistency between the teachings of the present disclosure and Baker: while Baker teaches how to make dynamite more stable to detonation, the Applicant teaches how to maintain the sensitivity of an ANFO explosive to detonation. The Examiner simply states that the patent to Baker “is an explosive...but is also a slurry explosive used for blasting” (see page 6, second paragraph, Examiner’s Answer).

Failure to Clearly Articulate a Reason for Combination

The Examiner states that Baker is not being utilized to teach the ANFO aspect of the Applicant’s invention, but merely that it is clearly known in the explosive slurry art to replace portions of ammonium nitrate with an additive such as epoxidized soybean oil (see bridging paragraph, pages 6-7 and second full paragraph, page 7, Examiner’s Answer). Even were this contention to be true, the Examiner has not provided any reason as to why Baker and Kelley would be combined. For example, the Examiner has not provided any evidence or argument as to why a person skilled in the art would draw from Baker—a document about

making dynamite more stable to detonation—a teaching about how to maintain the sensitivity of an ANFO explosive to detonation (see Section VII(6) of the Appeal Brief).

Hindsight Reasoning

The Examiner has only provided trite commentary concerning hindsight analysis that “it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning” (see page 7, first full paragraph, Examiner’s Answer). The Examiner has not provided any evidence or argument as to why a person skilled in the art would selectively choose epoxidized soybean oil out of a list of 24 alternatives.

Conclusion

The Applicant respectfully submits that the Examiner has not addressed all of the Applicant’s arguments and evidence set forth in the Appeal Brief dated March 7, 2011. The Applicant submits that the arguments set out above, and in the Appeal Brief, clearly demonstrate that the present invention as claimed is distinguishable over the cited art, whether alone or in combination, and satisfies all requirements under 35 U.S.C. §§ 101, 102, 103 and 112. Therefore, Applicant respectfully requests the Board of Patent Appeals and Interferences to reverse the final rejection of the Examiner and instruct the Examiner to issue a notice of allowance of all claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments associated with this application to Deposit Account No. 02-2095 of Bereskin & Parr LLP.

Respectfully submitted,

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